

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 STEWARD J. LEONARD

4 Plaintiff

5 v.

6 HUMACAO GLASS & ALUMINUM
7 CONTRACTORS; et al.

8 Defendants

CIVIL NO. 03-2250 (DRD)

9 **REPORT AND RECOMMENDATION**

10 Before the Court is Humacao Glass & Aluminum Contractors' ("Humacao Glass") and
11 Hector Rivera Castro's ("Rivera") (jointly referred as the "defendants") motion to dismiss (Docket
12 No. 46) claiming the Court lacks jurisdiction, and that the plaintiff has no standing to state a claim
13 against the appearing defendants. For the reasons set forth herein, the Court **RECOMMENDS** that
14 the motion to dismiss be **DENIED**.

15 **I. Factual Background**

16 On October 23, 2002, Steward J. Leonard ("Leonard") ordered from Humacao Glass,
17 through contractor Bernard Chance ("Chance"), six custom-made Thermopane glass plates. (Docket
18 51, p. 3, ¶ 1). The glass plates were to be installed by Chance in the plaintiff's second home in St.
19 Martin. (Docket 51, p. 2, ¶ 4). As was required by Humacao Glass and Rivera, then vice president
20 and administrator of Humacao Glass, the full price of the plates and installation fees, totaling \$
21 35,985.78, was paid to Humacao Glass by plaintiff. (Docket 51, p. 3, ¶ 2). Thereafter, Humacao
22 Glass shipped to Chance various glass plates which were different from the ones which had been
23 originally ordered by the plaintiff. (Docket 51, p. 3, ¶ 2). As a result, on November 25, 2003,
24 Leonard filed a Complaint against Humacao Glass and Rivera for breach of contract and damages
25 allegedly suffered. (Docket 51, p. 2, ¶ 4).

26 **II. Standard of Review**

27 In a jurisdictional challenge, "the standard applied to a 12(b)(1) motion is similar to the
28 standard applied to a 12(b)(6) motion, namely, the Court must take all of plaintiff's allegations as
 true and must view them, along with all reasonable inferences therefrom, in the light most favorable

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3 to plaintiff.” Pejepscot Indus. Park v. Maine Cent. R.R., 215 F. 3d 195, 197 (1st Cir. 2000); see
 4 Freiburger v. Emery Air Charter, Inc., 795 F. Supp. 253, 257 (N.D.III. 1992); Hart v. Mazur, 903
 5 F. Supp. 277, 279 (D.R.I. 1995) (motions under Rule 12(b)(1) and Rule 12(b)(6) reviewed under
 6 the same standard). Once the challenge has been raised, however, the plaintiff carries the burden
 7 of demonstrating the existence of the Court’s jurisdiction. See Puerto Rico Tel. v. Telecom
Regulatory Bd., 189 F. 3d 1, 7 (1st Cir. 1999).

8 When assessing whether dismissal is appropriate, “the trial court must accept as true the
 9 well-pleaded factual allegations of the complaint, draw all reasonable inferences therefrom in the
 10 plaintiff’s favor, and determine whether the complaint, so read, limns facts sufficient to justify
 11 recovery on any cognizable theory.” LaChapelle v. Berkshire Life Ins. Co., 142 F. 3d 507, 508 (1st
 12 Cir. 1998) (citations omitted). But “although this standard is diaphanous, it is not a virtual mirage.”
 13 Berner v. Delahanty, 129 F. 3d 20, 25 (1st Cir. 1997) (citing Gooley v. Mobil Motor Corp., 851 F.
 14 2d 513, 515 (1st Cir. 1988)). In order to survive a motion to dismiss, “a complaint must set forth
 15 factual allegations, either direct or inferential, respecting each material element necessary to sustain
 16 recovery under some actionable legal theory.” *Id.* When judging a complaint’s sufficiency, courts
 17 must set forth factual allegations, either direct or inferential, respecting each material element
 18 necessary to sustain recovery under some actionable legal theory.” *Id.* When judging a complaint’s
 19 sufficiency, courts must “differentiate between well-pleaded facts, on the hand, and bald assertions,
 20 unsupportable conclusions, periphrastic circumlocution, periphrastic circumlocution, and the like,
 21 on the other hand; the former must be credited, but the latter can safely be ignored.” LaChapelle,
 22 142 F. 3d at 508; see Rogan v. Menino, 175 F. 3d 75, 77 (1st Cir. 1999). The reviewing court
 23 should “not accept a complaint’s unsupported conclusions or interpretations of law.” Wash. Legal
 24 Found. v. Mass. Bar Found., 993 F. 2d 962, 971 (1st Cir. 1993).

25 **III. Legal Analysis**

26 **A. Lack of Jurisdiction**

27 Under Section 1332 of Title 28 of the United States Code, “the district courts have original
 28 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of
 \$75,000.00, exclusive of interests and costs, and is between citizens of different States”. 28

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2 U.S.C.A. § 1332. “The rule governing dismissal for want of jurisdiction in cases brought in federal
3 court is that, unless the law gives a different rule, the sum claimed by the plaintiff on the complaint
4 controls matter if dismissal for want of jurisdiction if the claim is apparently made in good faith,
5 and it must appear to a legal certainty that claim is really for less than jurisdictional amount to
6 justify dismissal.” St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89, (1938).
7 Under St. Paul, “a plaintiff’s allegations of damages that meet the amount in controversy
8 requirement suffices unless questioned by the opposing party or the court.” Spielman v. Genzyme
9 Corp., 251 F. 3d 1, 5 (1st Cir. 2001). “Once a defendant questions jurisdiction by challenging the
10 amount of damages alleged in the complaint, the burden shifts to the plaintiff to show that it is not
11 a legal certainty that the claims does not involve the requisite amount”. Id. p. 4; Barret v. Lombardi,
12 239 F. 3d 23, 30-31 (1st Cir. 2001). “Although federal courts must look to state law to determine
13 the nature and extent of the right to be enforced in a diversity case, the determination of the value
14 of the matter in controversy for purposes of federal jurisdiction is a federal question to be decided
15 under federal standards,” Horton v. Liberty Mutual Insurance Co., 367 U.S. 348, 352-53 (1961).

16 In the case at bar, defendants contest the jurisdictional amount claimed by the plaintiff,
17 alleging it was made in bad faith with the purpose of creating federal diversity jurisdiction. (Docket
18 46, p.16, ¶ 2). Defendants contend that plaintiff is seeking “double compensation” since he is
19 claiming not only the reimbursement of the amounts paid to Humacao Glass for the glass plates at
20 issue, but also the total amount paid for a second order of the same glass plates ordered to another
21 supplier. (Docket 46, p.10, ¶ 2). Defendants claim that under the Puerto Rico law, remedies for
22 breach of contract are limited to requesting specific compliance and interests or the rescission of
23 the obligation, with the indemnity for damages and payment of interests. (Docket 46, p.11, ¶ 2).
24 Therefore, they allege, plaintiff’s claim for damages must be limited to the difference between the
25 original payment of the glass plates and its installation and the payment for these two items made
26 to another supplier. (Docket 46, p.14, ¶ 2) In his opposition, Leonard alleges that the
27 jurisdictional amount claimed does not include reimbursement of the amount paid to Humacao
28 Glass. Instead, Leonard alleges that the jurisdictional amount includes the additional costs caused
by the breach of contract. (Docket 51, p. 10, ¶ 1). To support his claim, the plaintiff has detailed

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2 the alleged damages, among which are the costs of the glass plates which had to be bought to
3 another supplier, installation fees, shipping costs related to the returned plates supplied by other,
4 additional costs caused by the delay and related architectural fees. (Docket 51, p.10).

5 “To apply the legal certainty test, the Court is to look at the allegations from the face of the
6 pleadings. The plaintiff only need show that it is not a legal certainty that the claim will not result
7 in a verdict for the amount in controversy.” Rosado Torres v. Star- Kist Foods, 370 F. 3d 124, 128
8 (1st Cir. 2004). The Court notes that in the Complaint the plaintiff had previously detailed the
9 damages he is claiming and did not include the original \$ 35,985.78 payment to Humacao Glass.
10 (Complaint, ¶ 17). Thus, the plaintiff has not claimed “double compensation” as alleged by the
11 defendants, but additional costs caused by the breach of contract. Consequently, the Court
12 concludes that it is not legally certain that the plaintiff cannot recover an award in excess of \$
13 75,000.00 for the damages caused by the alleged breach of contract. Therefore, the Court
14 **RECOMMENDS** that the motion to dismiss on the basis of lack of jurisdiction be **DENIED**.

15 **B. Plaintiff’s Standing**

16 _____Next, defendants contest the plaintiff’s standing to bring the instant case since he was not
17 an actual party to the contract between Humacao Glass and his agent Chance. (Docket 46, p. 22,
18 ¶ 3). To that effect, defendants first assert that pursuant to Puerto Rico law, through an agency
19 contract, a person binds himself to render some services, or to do something for the account or at
20 the request of another, P.R. Laws Ann tit. 31 § 4421. “When an agent acts in his own name, the
21 principal shall have no action against the persons with whom the agent has contracted, nor the said
22 persons against the principal. In such case, the agent is directly liable to the person with whom he
23 has contracted, as if the transaction were his own”, P.R. Laws Ann. tit 31 § 4429. (Docket 46, p.
24 23, ¶ 2). Defendants argue that according to the plaintiff’s allegations, it was Chance who contacted
25 Humacao for a price quote of six large plates of Thermopane glass with aluminum window frames.
26 (Docket 46, p. 20, ¶ 2). Defendants further allege that Chance was the person with whom all the
27 negotiations were done, who received all the price quotes, who finally agreed with the price
28 submitted by the defendants on October 23, 2002, and who received the shipment under his name.
(Docket 46, p. 22, ¶ 2). According to defendants, Chance never disclosed his agency relationship

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2 with the plaintiff to the appearing defendants and that they were unaware of the plaintiff's existence
3 as principal until after Chance had already received the glass plates in St. Martin, and after the
4 contract had been already executed. (Docket 46, p. 24, ¶ 2).

5 Although defendants have submitted evidence to support their contention, the standard of
6 review of Fed. R. Civ. P. 12 requires the Court to take all of the plaintiff's allegations as true and
7 must view them, along with all reasonable inferences therefrom, in the light most favorable to the
8 plaintiff." Pejepscot Indus. Park v. Maine Cet. R.R., 215 F. 3d 195, 197 (1st Cir. 2000). Moreover,
9 when considering a motion to dismiss under Rule 12 the Court must limit its focus to the allegations
10 of the complaint. Litton Indus. V. Colon, 587 F. 2d 70, 74 (1st Cir. 1978). The Court finds that the
11 evidence presented by the defendants is beyond the scope of the Court which is limited to the
12 allegations on the complaint. For the above stated reasons, the Court concludes that it is not able
13 to review the evidence presented by the defendants at this stage of the proceedings. Therefore, the
14 Court **RECOMMENDS** that the motion to dismiss on the basis that the plaintiff has no standing
15 be **DENIED**. Defendants, however, may explore this issue as a defense at the summary judgment
16 stage. _____

17 **C. Indispensable Party**

18 _____ Defendants claim that Chance is an indispensable party because he was the person who
19 entered into the contract in question with Humacao Glass. Defendants allege that Chance's absence
20 will cause undue prejudice, and a potential risk to the appearing defendants since the plaintiff was
21 not aware of how the transaction was performed and which were the actions taken by the parties
22 involved in such contract. (Docket 46, p. 24, ¶ 2). The question of whether Chance is an
23 indispensable party is governed by Fed. R. Civ. P. 19(a); which sets forth a two part inquiry,
24 pursuant to which said party must be first necessary and second indispensable. Rule 19(a) provides
25 that a person should be joined in a pending action when complete relief cannot be afforded to those
26 who are already parties, or the person claims to have an interest in the action and his absence would
27 hinder his ability to protect that interest or leave a person who is already a party "subject to
28 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the
claimed interest." Fed. R. Civ. P. 19(a). When applying the above stated test, the Court must

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2 consider whether complete relief can be afforded to the plaintiff in the absence of Chance. Second,
3 a party is indispensable under Rule 19(a)(2) only if it claims a “legally protected” interest relating
4 to the subject matter of the action. United States v. San Juan Bay Marine, 239 F. 3d 400, 406 (1st
5 Cir. 2001). Finally, as to the risk of multiple and/or inconsistent obligations, “the key is whether
6 the possibility of being subject to multiple obligations is real; an unsubstantial or speculative risk
7 will not satisfy Rule 19(a) criteria.” 7 Charles A. Wright, Arthur R. Miller & Mary Kay Kane,
8 Federal Practice and Procedure: Civil 3d § 1604 at 64.

9 For the matter at bar, the Court will assume that Chance is a necessary party under Rule
10 19(a) since he was the person responsible for placing the original order of glass plates with
11 Humacao Glass which gave rise to Leonard’s breach of contract claim. The Court will also assume
12 that Chance is an indispensable party under Rule 19(a) in order to protect defendants from multiple
13 obligations, since he was a party to the contract that was allegedly breach by the defendants and is
14 entitled to state a claim for the breach of such contract. The record also reflects that Judge
15 Domínguez stated at a Status Conference (see Docket No. 53) that if it was recommended by this
16 Magistrate Judge that Chance was an indispensable party to the complaint, that fact would not
17 divest the Court from its jurisdiction, hence dismissal is not warranted because all it would take
18 would be to amend the complaint. The Court further notes that defendants acknowledged said
19 reasoning. (Docket No. 53). Therefore, the Court **RECOMMENDS** that the motion to dismiss on
20 the basis that an indispensable party is not a party to the Complaint be **DENIED**._____

21 _____**SO RECOMMENDED.**

22 In San Juan, Puerto Rico this 7th day of October, 2005.

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25 *St. Gustavo A. Gelpi*
26 GUSTAVO A. GELPI
27 U.S. Magistrate Judge
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